Roger Williams University Law Review

Volume 25
Issue 3 *Vol. 25, No. 3 Summer 2020*

Article 20

Summer 2020

Summit Insurance Co. v. Stricklett, 199 A.3d 523 (R.I. 2019)

Amanda LaRocca
Candidate for Juris Doctor, Roger Williams University School of Law

Contracts. *Summit Insurance Co. v. Stricklett*, 199 A.3d 523 (R.I. 2019). Insurance companies owe a fiduciary duty to their insured to defend them against liability to third parties by "good faith and fair dealings" with timely and fair settlement offers to the injured within the policy limits.[1] The Rhode Island Supreme Court has declared that this fiduciary duty extends to an injured third party when the insured has clearly assigned his or her rights to the third party.[2]

FACTS AND TRAVEL

In April 2002, Eric Stricklett (Stricklett) operated a car which struck and injured Scott Alves, an eleven-year-old boy, who had jumped off his bike and ran into the road.[3] Scott[4] underwent three surgeries to repair his fractured tibia and fibula.[5] In December 2002, the Alves family (Alveses) submitted Scott's medical records to Summit Insurance Company (Summit); however, after conducting an investigation, Summit determined Stricklett had no fault for Scott's injuries and informed the family that it would "make no offers on this case."[6] Nearly eight years later, in April 2011, the Alveses hired a new attorney who reached out to Summit informing them that the family would proceed with the lawsuit against Stricklett.[7] The Alveses' attorney notified Summit by letter that he disagreed with the finding that Stricklett had no fault in the accident and asked Summit to provide information regarding

1. Summit Ins. Co. v. Stricklett, 199 A.3d 523, 528 (R.I. 2019).
2. *Id*. at 529.
3. *Id*. at 524 n.6 (citing witness testimony).
4. Consistent with the Court's opinion, Scott Alves will be referred to by his first name. Additionally, Scott Alves, John Alves, and Cathy Alves will be referred to collectively as the "Alveses."
5. *Summit*, 199 A.3d at 524.
6. *Id*.
7. *Id*. at 524.

the policy limits in Stricklett's contract.[8] Summit requested the Alveses call to discuss the claim; in response, the Alveses requested a copy of the entire policy because they would "not be in a position to discuss settlement . . . until [they had] seen the entire policy."[9]

On May 9, 2011, the family provided Summit with Scott's medical records and bills, which included $59,792.66 in hospital bills and $20,945 in orthopedic treatments, and indicated that they were still waiting to receive a copy of the insurance policy.[10] Later, the Alveses learned that "Summit could not locate a copy of the insurance policy."[11] Due to the unavailability of the policy, the Alveses demanded a $300,000 settlement, stating that Summit was liable for the policy limit of $25,000 and due to its failure to previously offer its policy limits Summit would "undoubtedly be held liable for all interest over and above the policy limit."[12] Further, the Alveses claimed that, "if Summit failed to settle and the cases proceeded to trial, it would be 'liable for all damages over and above the policy limits in accordance with *Asermely*.'"[13] Summit responded by offering the Alveses the policy limit of $25,000 which they rejected and subsequently filed suit against Stricklett.[14]

Summit filed a complaint seeking declaratory relief against Stricklett and the Alveses, asking the court to declare that Summit had "no duty to pay interest beyond its policy limits on any judgment in connection with the underlying action" and that it had "no duty to pay the Alves[es] anything beyond its policy limits on any judgment in connection with the underlying action."[15] The Alveses counterclaimed for declaratory relief against Summit, "alleging that Summit was liable for 'pre-judgment interest accrued upon all damages' from Scott's injuries and 'for all damages over and above any provable policy limit.'"[16] Both parties filed cross-

8. *Id*. at 524–25.
9. *Id*. at 525 (alteration in original).
10. *Id*.
11. *Id.*
12. *Id.*
13. *Id*.; Asermely v. Allstate Ins. Co., 728 A.2d 461 (R.I. 1999).
14. *Summit*, 199 A.3d at 525.
15. *Id*. (alteration in original).
16. *Id*. Stricklett only indirectly participated in the succeeding litigation. *Id*.

motions for summary judgment, which were denied because the hearing justice determined that "there were genuine issues of material fact concerning what had transpired between the parties in 2003, following the Alveses' claim."[17] Meanwhile, the Alveses submitted a motion for the declaratory-judgment action to be given priority over the tort suit, and the Superior Court granted that motion.[18]

One year later, the trial justice issued judgment in favor of Summit.[19] In his decision, the trial justice interpreted Summit's insurance policy and concluded that the policy's interest provision "did not require that Summit pay interest in excess of the policy limit and that this contract provision did not violate Rhode Island law."[20] The trial justice then examined the rejected settlement offer statute[21] and determined that "the statute did not apply in his case because the Alveses had never made an offer to Summit at or around the policy limits."[22] Finally, the trial justice concluded that Summit owed no duty to the Alveses because they "were neither Summit's insureds nor assignees of the rights of Summit's insureds."[23] Although the trial justice noted that an insurer only owes its insured a duty, on March 13, 2017, he entered a final decision with a contradictory ruling, which stated that "Summit does owe a duty to the Alves[es] to act in a reasonable manner and in good faith in settling the claim," but found that Summit had fulfilled this duty and hence was "not required to pay all

17. *Id*.

18. *Id*. at 525–26.

19. *Id*. at 526.

20. *Id*. at 526–27.

21. 27 R.I. GEN. LAWS § 27-7-2.2 provides that when a plaintiff makes a written offer to the defendant's insurer in an amount equal to or less than the coverage limits and the defendant's insurer rejects the offer, the defendant's insurer shall be liable for all interest due on the judgment entered by the court, even if the payment of the judgment and interest totals a sum in excess of the policy coverage. *Id.* at 527 n.12.

22. *Id*. at 527. The trial judge declined to rule on the applicability of the prejudgment interest statute because he believe it would be premature to decide this issue. *Id*.

23. *Id*.

prejudgment interest that has accrued on the action."[24] On March 17, 2017, the Alveses filed a timely appeal.[25]

ANALYSIS AND HOLDING

The Rhode Island Supreme Court (the Court) "review[s] a declaratory decree of the Superior Court with an eye to whether the court abused its discretion, misinterpreted the applicable law, overlooked material facts, or otherwise exceeded its authority."[26] "However, questions of law are reviewed *de novo*."[27]

On appeal, "the Alveses aver[ed] that the duty of an insurer to affirmatively settle an insurance claim on behalf of its insured . . . applies with equal force to third-party claimants in the form of a duty of good faith and fair dealings."[28] Further, the Alveses asserted that Rhode Island Supreme Court precedent "instruct[s] that a duty of good faith and fair dealing runs from the insurer to the third-party claimant regardless of whether there has been an assignment of the insured's rights."[29] However, the Court noted that it "has never recognized such a duty and has never held that an insurer has extracontractual liability to a third-party claimant in addition to a contractual, fiduciary duty to its insured for failing to settle a claim in a timely manner where § 27-7-2.2 was not applicable."[30] Due to the lower court's contradictory holding and the Alveses misconceptions of the precedent, the Court found it necessary to clarify its past decisions.[31]

The Court began its discussion of "relevant opinions" with *Asermely*; a case where an arbitrator awarded a settlement offer within the policy limits to the third-party claimant, which the insurer denied. Following the trial, the verdict returned was an

---

24. *Id.* (quoting trial judgment) (alteration in original).

25. *Id.*

26. *Id.* at 528 (quoting State ex rel. Kilmartin v. R.I. Troopers Ass'n, 187 A.3d 1090, 1098 (R.I. 2018)).

27. *Id.*

28. *Id.*

29. *Id.* (citing Asermely v. Allstate Ins. Co., 728 A.2d 461 (R.I. 1999); DeMarco v. Travelers Ins. Co., 26 A.3d 585 (R.I. 2011); Skaling v. Aetna Ins. Co., 742 A.2d 282 (R.I. 1999) (*Skaling I*); and Skaling v. Aetna Ins. Co., 799 A.2d 997 (R.I. 2002) (*Skaling II*)).

30. *Id.*

31. *Id.*

amount well above the policy limit, which the insurer refused to pay in full.[32] After receiving assignment of the insured's claims against the insurer, Asermely filed suit against the insurer for disregarding its duty to the insured in bad faith.[33] The Superior Court ruled in favor of the insurer, and on appeal, the Court reversed.[34] The Court held that an insurance company has "a fiduciary obligation to act in the best interests of its insured in order to protect the insured from excess liability";[35] therefore, if a plaintiff makes a reasonable settlement offer within the policy limits which is denied by the insurer, then the insurer is liable for any verdict over the policy limit.[36] Additionally, the fiduciary duty extends not only to the insured, but also to "a party to whom the insureds have assigned their rights."[37]

The Court then discussed its decisions in *Skaling I* and *Skaling II* which "involved a first-party claim brought by an insured directly against its insurer for the refusal to pay underinsured motorist (UIM) benefits pursuant to the insurance contract involved in those cases."[38] In *Skaling I*, the Court "held that [the insurer] was liable for all prejudgment interest pursuant to § 9-21-10, because [the insurer] had breached its duty to the plaintiff-insured 'by refusing to cover the damages within the contractual limits.'"[39] Following the Court's decision, the insurer "moved for summary judgment in the Superior Court on an outstanding claim alleging insurer bad faith, arguing 'that [the plaintiff's] claim against the underinsured tortfeasor was a fairly debatable claim, thereby relieving [the insurer] of any liability for insurer bad faith.'"[40] The hearing justice granted the insurer's motion and the plaintiff once again filed an appeal with the Supreme Court.[41] The Court vacated the decision below and explained "that the duty of good faith and fair dealing includes an affirmative duty to engage in timely and meaningful

32. *Id*.
33. *Id.*
34. *Id*.
35. *Id*. (internal quotation marks omitted).
36. *Id*. at 529.
37. *Id*.
38. *Id*. at 530.
39. *Id.* at 529 (quoting *Skaling I*, 742 A.2d 282, 292 (R.I. 1999)).
40. *Id.* at 530 (quoting *Skaling II*, 799 A.2d 997, 1001 (R.I. 2002)).
41. *Id.*

settlement negotiations and to make and consider offers of settlement consistent with an insurer's fiduciary duty to protect its insured from excess liability."[42] Unlike *Asermely*, *Skaling II* reiterated that the insurer has an obligation to act in the best interests of its insured with no mention or extension to a third party claimant.[43]

Finally, the Court discussed *DeMarco*, where the Court considered "whether the *Asermely* rule should be expanded to situations with multiple-third party claimants."[44] The Court explained that the insurer's duty to relieve the insured of as much liability as possible must be dealt with in "good faith and fair dealing" when multiple claimants exist and that "an assignee can bring a claim against an insurer, even after the insured has been absolved through an execution of release."[45] Ultimately, the Court held that the *Asermely* rule is applicable in the multiple-claimant context.[46]

Here, the Court found that *Asermely* did not apply to the Alveses' case because they never presented an offer within the policy limits to Summit, which is the only time that an insurer must seriously consider a settlement offer.[47] The Alveses claimed that they could file suit against Summit under *Asermely*, which allowed a third party assignee of the insured's rights to sue for operating in bad faith during settlement negotiations.[48] However, the Court found two reasons why the Alveses' claim failed: no offer was made within the policy limits and no assignment of the insured's rights was given to the Alveses.[49] Unlike *Asermely*, where the settlement offer was within the policy limits, the Alveses only settlement offer was made eight years after the accident for $300,000, which was six times the policy limit; therefore, the Alveses never made a reasonable settlement offer to be seriously considered by Summit.[50]

---

42. *Id.* (quoting *Skalling II*, 799 A.2d at 1005-06).
43. *Id*.
44. *Id.* (quoting DeMarco v. Travelers Ins. Co., 26 A.3d 585, 605 (R.I. 2011)).
45. *Id*. at 530–31.
46. *Id.* at 531.
47. *Id*. at 532.
48. *Id*.
49. *Id*.
50. *Id*. at 525, 532.

Additionally, the Alveses argued Summit owed them a duty based on specific language from *DeMarco*, which states that although *Skaling II* involved a first-party claimant and *Asermely* a third-party claimant, both cases implicated similar policy concerns.[51] However, the full context of the sentence further indicates that the insurer is obligated to put forth efforts to reduce the burden on the insured. Thus, although the precedent cases may change in context from third-party claims to first-party claims, it remains constant that the insurance company's duty for "good faith and fair dealing" in the underlying settlement discussions is to the insured, or under *Asermely*, to a third party claimant to whom the insureds have assigned their rights.[52] Accordingly, the Court found Summit owed no duty to the Alveses and determined that the trial justice's conclusion that Summit owed a duty and fulfilled this duty by acting reasonably and in good faith was incorrect.[53]

COMMENTARY

The Court, in deciding Summit never had a duty to exercise "good faith and fair dealing" with the Alveses during settlement proceedings, distinguished the facts in the instant case from those in *Asermely*, the controlling law, and *Skaling I*, *Skaling II*, and *DeMarco*, the clarifying cases.[54] The Court decided that these distinctions and clarifications were necessary to prevent a floodgate of litigation brought by third-parties against insurers.[55] To allow a third party to bring a breach of duty claim against an insurer absent an assignment would expand an insurance company's potential liability and establish a new judicially-created cause of action.[56] Courts generally wish to avoid the creation of judicially-created causes of action because it is the state legislature's job to make the law.[57]

Here, the statute at issue is Rhode Island General Laws section 27-7-2.2, which states "in any civil action in which the *defendant is*

51. *Id*. at 532.
52. *Id*.
53. *Id*. at 533.
54. *Id*. at 528.
55. *Id*. at 528, 533.
56. *Id*. at 533.
57. McCullough v. State, 490 A.2d 967, 969 (R.I. 1985).

covered by liability insurance and in which the plaintiff makes a written offer to the defendant's insurer to settle . . . and the offer is rejected by the defendant's insurer, then the *defendant's insurer* shall be liable for all interest due on the judgment."[58] In section 27-7-2.2, the legislature makes many references to the "defendant" and the "defendant's insurer" thus demonstrating its intent that the duty owed by the insurance company is to the company's insured. Therefore, in *Asermely*, the Court had the authority under the statute to extend the cause of action to a third party who was assigned the rights of the insured because the defendant-insured's rights against the insurance company were transferred to a third party.[59]

It was proper for the Court to deny the Alveses' claim that they could sue Summit under *Asermely*. Given that the purpose of the statute is to allow suit against an insurance company based on the insured's rights, the Court could not judicially create a cause of action allowing a third party to sue an insurance company for breach of duty when no legal duty is owed to that party, as this would directly contravene legislative intent.[60]

CONCLUSION

The Rhode Island Supreme Court held that an insurer owes no duty to a third party claimant and further clarified that *Asermely* only allows a third party claimant to sue an insurer on grounds of a duty of good faith and fair dealing if there has been an assignment of the insured's rights and a reasonable settlement offer within the policy limits was rejected by the insurer.

Amanda LaRocca

58. 27 R.I. GEN. LAWS § 27-7-2.2 (emphasis added).
59. *Summit*, 199 A.3d at 529.
60. *Id*. at 533.